

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF NEBRASKA, OMAHA DIVISION**

**JULIE A. SU,
ACTING SECRETARY OF LABOR,
UNITED STATES DEPARTMENT
OF LABOR,**

Plaintiff,

v.

NOAH'S ARK PROCESSORS, LLC,

Defendant.

Civil Action No. 8:23-cv-529

COMPLAINT

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Pursuant to Section 217 of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. § 201, *et seq.* (“FLSA” or the “Act”), Plaintiff, Julie A. Su, Acting Secretary of Labor, United States Department of Labor (“Acting Secretary”), brings this action to enjoin and restrain Defendant Noah’s Ark Processors, LLC (“Defendant”) from violating Sections 207, 211, and 215(a)(2) of the Act and to recover unpaid compensation, plus an equal amount in liquidated damages pursuant to Section 216(c), for Defendant’s employees.

The Acting Secretary, through the Wage and Hour Division, conducted an investigation of Defendant for compliance with the FLSA. The Acting Secretary’s investigation reviewed Defendant’s employment and pay practices from September 26, 2021, through February 4, 2023 (“Investigation Period”). Unless stated otherwise, all allegations and conditions described herein pertain to the Investigation Period.

JURISDICTION AND VENUE

1. Jurisdiction of this action is conferred upon the Court by Sections 216(c) and 217 of the Act, 29 U.S.C. §§ 216(c), 217, as well as by 28 U.S.C. §§ 1331 and 1345.

2. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) because a substantial part of the events giving rise to these claims occurred within this District.

3. Pursuant to District of Nebraska Local Rule 40.1(b), the Acting Secretary has requested this matter be heard in Omaha, Nebraska.

DEFENDANTS

4. Defendant Noah's Ark Processors, LLC ("Noah's Ark" or "Defendant") is a Minnesota limited liability company, with its headquarters and principal place of business located within this Court's jurisdiction at 1009 West M. Street, Hastings, Nebraska 68901.

5. Noah's Ark is a kosher meat processing/packing plant and slaughterhouse, which distributes product throughout the domestic United States.

6. Noah's Ark employed employees on the "fabrication", "kill", and "kosher" floors who graded, cut, de-boned, prepared, and packaged bovine carcasses, including but not limited to chuck, rib, loin, and round.

7. During that time, Defendant engaged in business in Adams County, Nebraska, within this Court's jurisdiction.

THE FLSA APPLIES TO DEFENDANT

8. Noah's Ark is an "enterprise" under the FLSA due to its related activities performed through unified operation or common control and for a common business purpose. 29 U.S.C. § 203(r).

9. Noah's Ark is an "enterprise engaged in commerce" under the FLSA, because it had both: (i) more than two (2) employees who engaged in, or produced goods for, commerce; and (ii) an annual dollar volume greater than \$500,000 for years 2020, 2021, and 2022. 29 U.S.C. § 215(a)(2).

10. Noah's Ark has employed and continues to employ its employees in and about its place of business in the activities of an enterprise engaged in commerce or in the production of goods for commerce, including employees handling, processing, packaging, and/or otherwise working on goods and materials that have been moved in or produced for commerce. This includes, but is not limited to, the handling, processing, and packaging of bovine carcasses that originated outside of the State of Nebraska, which are handled, processed, and packaged for consumption outside of the State of Nebraska, as well as the use of equipment that originated outside of the State of Nebraska.

DEFENDANTS' FLSA VIOLATIONS

11. Defendant repeatedly violated Sections 207 and 215(a)(2) of the FLSA when it failed to pay its employees for all hours worked, including hours worked in excess of 40 in a workweek. Specifically, Defendant violated Section 207 of the FLSA when it failed to pay workers for overtime hours worked in the form of work duties performed outside the gang time hours and off of the clock. § 207(a)(1); § 215(a)(2).

12. Defendant violated Section 207 of the FLSA when it failed to pay workers for time spent gathering equipment(boots, helmets, frocks, hairnets, gloves, knives, etc.) and cleaning tools such as knives prior to clocking in and working on the line and after leaving the line and clocking out.

13. Defendant required its employees to don and doff personal protective equipment, including but not limited to frocks, mesh, plastic aprons, and arm guards, as well as clean equipment, including knives, before and after their scheduled shifts. Such activities were integral to the work being performed and should have been compensated.

14. Defendant was aware of the amount of time employees spent performing these pre and post shift activities. Further Defendant knew that such uncompensated time regularly caused employees' working hours to exceed forty (40) hours in a workweek or occurred during workweeks in which employees' working hours exceeded forty (40).

15. Despite being aware that its employees' time clock hours typically exceeded forty (40) per week, including time spent engaging in the compensable activities referenced *supra*, Defendant only paid its employees a specific amount of "gang time" hours each day.

16. Under Defendant's gang time policy, the employee at the very end of the production line starts getting paid when the employee at the beginning of the production line starts working and then the employee at the beginning of the production lines stops getting paid when the employee at the end of the production line stops working.

17. The seven (7) minutes of additional time paid by Defendant each day to its employees was insufficient to compensate its employees for all hours worked pre and post shift and outside of gang time, including overtime hours.

18. Sections 211 and 215 of the FLSA require employers to make, keep, and preserve adequate and accurate records under 29 C.F.R. Part 516. *See* § 211(c); § 215(a)(5).

19. Defendant violated Sections 211 and 215 of the FLSA by failing to make, keep, and preserve adequate and accurate time records regarding its employees. Specifically, when it failed to record hours worked by employees off the clock and outside of gang time hours, including

but not limited to picking up equipment, changing into and out of personal protective equipment, cleaning up equipment, and turning in equipment at the end of the day.

REMEDIES SOUGHT

20. As a result of its FLSA violations, Defendant owes the employees listed in **Exhibit A** back wages and liquidated damages, under 29 U.S.C. §§ 216(c), 217. If Defendant continued to violate the FLSA after the Investigation Period, then Defendant may owe additional back wages and liquidated damages to employees.

21. Defendant may also owe additional back wages and liquidated damages, during the Investigation Period, to its employees whose identities the Acting Secretary does not currently know.

22. As a result of its FLSA violations, Defendant has unlawfully withheld unpaid compensation from its employees.

PRAYER FOR RELIEF

As a result of Defendant's FLSA violations, the Acting Secretary respectfully requests this Court enter an Order:

- a. Permanently enjoining and restraining Defendant from continuing to withhold employees' unpaid overtime compensation, which the Courts find due under the FLSA. 29 U.S.C. § 217(a);
- b. Permanently enjoining and restraining Defendant from violating Sections 207, 211, and 215 of the FLSA. 29 U.S.C. § 217(a);
- c. Finding Defendant liable for unpaid overtime wages, plus equal amounts in liquidated damages, owing to Defendant's employees listed in **Exhibit A** for the Investigation

Period, as well as to other of Defendant's employees not yet known to the Acting Secretary. 29 U.S.C. § 216(c);

d. Pursuant to Section 216(c) of the Act, finding Defendant liable for unpaid overtime wages, plus liquidated damages, owing to Defendant's employees listed in **Exhibit A** for violations occurring after the Investigation Period, as well as to other of Defendant's employees who may be presently unknown to the Acting Secretary and who are owed unpaid wages for the Investigation Period and violations occurring thereafter;

e. If the Court declines to award liquidated damages, then enjoining and restraining Defendant, its officers, agents, employees, and those persons in active concert or participation with Defendant, from withholding all wages found owing to Defendant's employees, plus prejudgment interest computed at the underpayment rate established by the Acting Secretary of the Treasury pursuant to 26 U.S.C. § 6621;

f. Compelling Defendant to increase daily time gang paid to sufficiently compensate its employees all hours worked, including overtime hours;

g. Providing such other relief as this Court deems just and appropriate; and

h. Awarding costs.

Dated: November 29, 2023

SEEMA NANDA
Solicitor of Labor

CHRISTINE Z. HERI
Regional Solicitor

EVERT H. VANWIJK
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EXHIBIT A

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Adame De Portillo, Maria M
Aguiar Gonzalez, Leonardo
Aguilar Castillo, Enrique
Aguilar Gonzalez, Leonardo
Alamo Melendezdez, Johanna
Alarcon, Victor M
Alba, Miguel
Alicea Maldonado, Jobiel
Alonso Gonzalez, Juan
Alvarado Constanza, Marta
Alvarado Costanza, Jorge
Alvarado Esparza, Dominick
Alvarado Mateo, Ely J
Alvarez, Avery J
Alvarez, Juan
Amistad Chavez, Angela
Anciani, Jorge A
Anderson, James L
Andino Riveria, Angel
Andino, Gina J
Andrade, Michael
Aponte Rosado, Jelissa
Apreciado, Ruben
Arevalo Alejo, Kimberly
Arias Pena, Anneudis E
Arriaga, Michael
Arroyo Colon, Edgardo
Avila, Eduardo
Ayala, Alfredo
Ayala, Noe O
Bacon, Jimmie J
Balles, Christopher M
Barbee, Michael
Barbosa, Edgar O
Barragan, Alexis D
Barraza Carrillo, Elizabeth

Barraza, William E
Barrera, Isaiah
Barrera, Maribel
Barrientes Jr, Billy J
Becerra Garcia, Alejandro B
Benner, Joseph R
Bernabe Calo, Domingo O
Bernabe Jacinto, Miguel
Bernal, Roy A
Biscarra, Juan
Brewer, James B
Broaddus, Derrick J
Brown, Adrian
Brown, Jubal L
Brown, Keith A
Burciaga, Jonathan
Caballero Fierro, Martin J
Calvillo Ortiz, Ricardo
Camacho, Ricardo
Canas, Maria B
Cano, Jose E
Cantu, Klara
Cardenas Jr, Jose A
Carlson, Zach
Carrell, Ashton S
Carrera, Alyssa
Carrion Ortiz, Juan C
Caseres, Juan L
Castellanos Sarduy, Reinier
Castillo, Albert
Castillo, Veronica
Caudillo, Leonel
Cerda, Jose L
Cervantes, Uriel
Chacon, Kristen
Channel Cruz, Cristiane
Chavez, Willibaldo
Christobal Loza, Daniel
Cintron Rivera, Raul A

Claudio, Awilda
Collado, Jeissie J
Collazo, Efrain
Colon Aldoy, Omar J
Contreras, Austin
Cook, Clark
Coombs Iniguez, Yunior C
Copeland, Michael E
Coral, Jesus
Coriano Cotto, Williblas
Cornelio Valdez, Jose
Cosme, Edwin B
Crawford, Garrick A
Cruz Garcia, Omayra N
Cruz Pagan, Honeill
Cruz Pizarro, Paola M
Cruz Vazquez, Edwin
Cruz, Cindy
Cruz, Jessica M
Cruz, Sasha
Cumba, Elvin Muriel
Curiel Perez, Stephanie
Damian Escamilla, Menardo C
De Jesus Cruz, Janelis
De Leon, Dixie Y
Dedivanaj, Agron
Deharo, Franklin A
Delgado Colon, Emilen D
Detron Pressley, Marlon
Dettman Jr, John D
Dewayne Kelly, Tony
Deweese, Cory H
Diaz Hernandez, Sandra L
Diaz Leon, Yasel
Diaz, Alicia
Diaz, Jesus E
Diaz, Maria G
Diaz, Nichole
Dolores Askew, Jasmine J
Dominguez Alvarado, Araminda
Dominguez Donis, Jose

Dominguez, Monica
Douglass, Jawayne S
Draper, Shane A
Duarte, Steven
Dunn, Brandon R
Duran, Klah D
Eggum, Wesley C
Elicerio, Adrian
Elvir, Hector A
Epting, Thomas T
Erazo, Victor L
Escobar Valdez, Maria A
Escobedo, Jose M
Espinosa, Anthony
Estrada, Jacob
Facio, Elvira
Falcon, Victor S
Feria, Margarita
Fernandez Alvarez, Angela L
Fernando, Hector
Figueroa Quiros, Mario
Figueroa, Jose
Flores Ramon, Baudilia
Flores, Alexandra M
Floy Fay, Deandre M
Floyd Fay, Deandre M
Foster, Peter
Francisco Toledo, Catalina L
Fuentes, Sabrina
Fuentes, Sandra E
Galacia, Petra
Galarza Cortes, Joumar M
Galicia Aguirre, Gloria E
Gallegos, Susana E
Gallegos, Victor J
Garay Molina, Luis M
Garay, Gerardo
Garcia II, Marcos G
Garcia Jr., Freddie
Garcia marquez, Wilfredo
Garcia Perez, Obdulio G

Garcia Santiago, Francisco J
Garcia, Aaron
Garcia, Abel
Garcia, Alejandro
Garcia, Daisha
Garcia, Jorden C
Garcia, Josiah W
Garcia, Klarissa C
Garcia, Maria D
Garcia, Richard
Garcia, Vivian A
Garcias, Ricardo
Gary, Harim A
Garza, Jose
Gomez Rodriguez, David
Gomez Sr., Fabian B
Gomez, Ashley M
Gomez, Daniel E
Gomez, Melene
Gomez, Monica A
Gomez, Ricardo
Gonzalez Cabello, Yoel
Gonzalez Jr, Gerardo J
Gonzalez Jr., Christopher
Gonzalez Torres, Seira D
Gonzalez Ventura, Yoan M
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Gonzalez, Ashley M
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Gonzalez, Elaina A
Gonzalez, Erik
Gonzalez, Erik I
Gonzalez, Estevan D
Gonzalez, Marquez D
Gonzalez, Nancy
Gonzalez, Roger A
Gonzalez, Victor
Gonzalez, Yaimara
Govea, Francisco J
Gover, Jenny L
Graveran Acosta, Yulena

Guadalupe, Alda
Guevara, Cristal M
Guillen, Michael D
Gutierrez Garcia, Pedro
Gutierrez, Maricella A
Gutierrez, Randy
Guzman, Rebecca N
Harrison, Michael
Hernandez Rivera, Ernesto
Hernandez Acosta, Aramis
Hernandez Jr, Juan
Hernandez Lascaibas, Juan J
Hernandez Ortiz, Janilette
Hernandez, Fermin A
Hernandez, Henry
Hernandez, Melissa
Hernandez, Natalie E
Hernandez, Sonia
Herrera, Marina
Hinojosa, John
Huni, Bradley D
Hurtado, Eduardo
Ibarra, Enrique
Jackson Jr, Noe
Javier Rivera, Luis
Jefferson, Tristyn S
Johnson, Darnell C
Johnson, Lessica M
Juarez, Michelle
Jurado, Julio C
Khamir, Daniel O
Kilgore, Breaanna R
Knight Jr, James M
Kober, Austin L
Kouri, Seens K
Laborda Ramos, Brian O
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Lahera Quinones, Yudit
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Lara, Lina

Lastor Ramos, Maria
Lenox, Dakota L
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Lopez Fontanez, William
Lopez Garcia, Alberto
Lopez Jr., Americo
Lopez Quevedo, Laura V
Lopez Rodriguez, Arlist J
Lopez Roman, Alexander G
Lopez Sanchez, Gilberto
Lopez, Alex J
Lopez, Evelin G
Lopez, Jaime
Lopez, Julio
Lopez, Mario
Lopez, Priscilla E
Lopez, Rocio
Lopez, Rolando
Lopez, Sonia
Lopez, Valeria
Losoya, Mario A
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Mackenzie Walker, Tyler
Malboa Rodriguez, Yanelkys
Maldenado Parilla, Joel
Maldonado, Briana M
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Marcano Rivera, Miguel
Marie Mejia, Liza
Marin, Jesus D
Marquez, Marianela
Marrero Lopez, Jesus O
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Martinez Pineda, Eloisa
Martinez Leyva, Albin
Martinez Ruiz, Juan
Martinez Santiago, Yordan
Martinez Viera, Lisandra
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Martinez, Charles

Martinez, Daniel
Martinez, Jesus
Martinez, Mario
Martinez, Silvia M
Martinez, Willie G
Masiel, Mahley
Mata, Cassandra
Maurice, Demarco
Maynez, Ramona
McDowell, Tony R
Meadows, Cody A
Medina Bustio, Francisco
Mejia, Angel A
Mejia, Joe
Melendez ALicea, Melvin
Melendez Arroyo, Manuel A
Melendez, Devin G
Mendez, Florinda
Mendoza, Angel
Mendoza, Daniel
Mercado Ramos, Danmar V
Millan Sanchez, Lucia
Milstead, Martin
Miranca Snowden, Taylor
Miranda, Yasmani
Misa Machado, Lilian
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Molina Castillo, Mario R
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Molina, Nathaniel
Molina, Tatiana A
Moncada Ortiz, Mariel
Monsegur Gonzalez, Luis R
Montano Campa, Michael A
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Moore Jr, Jarrel L
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Morales, Francisco J
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Moya Rivera, Alfonso
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Muralles Jr., Jose A
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Orlando, Thomas J
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Ortiz, Javier A
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Palacios, Carrisa S
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Pena, Bryan
Pena, Christina
Pena, Hector D
Perales, Cassandra L
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Perez Garcia Jr, Ramiro
Perez Rodriguez, Karla
Perez Rosado, Richard

Perez, Fernando
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Ponce, Jesus R
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Ramos Yambo, Margarita
Ramos, Mariana
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Ray Rando, Jeremiah
Ray Villarreal, John
Recinos, Kimberly B
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Reyes Aponte, Celimar
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Rodriguez, Michael
Rodriguez, Minerba
Rodriguez, Roberto
Rodriguez, Saphire R
Rodriguez, Tomas
Rojas Peralta, Alexander
Romero, Gilberto
Romero, Gustavo
Rondon Reyes, Luis F
Rosado Figueroa, Loraine
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Rose Acevedo, Allison
Ross Castro, Preston
Ruiz, Ann M
Ryan Garza, Justin
Salas, Marco A
Salazar, Christopher D
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Sanchez, Steven
Sandoval Garcia, Rafael

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Sepulveda Valdivieso, Damaris I
Settle, Daniel
Sican Juarez, Fernando
Silvino, Anthoni
Simmons Jr, Otis
Sims, Joshua A
Sinohui Romero, Baudelia
Stanford, Domanic R
Stanford, Dominic R
Steven Dominguez, Bryan
Storz, Brandon D
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Summers, Devon J
Tamez, Danny
Tapia, Carlito J
Tomlin, Nathaniel L
Toro, Norma
Torres Cortes, Wilbert
Torres Delgado, Milagros
Torres Gonzalez, Jorge A
Torres Jr, David M
Torres, Emilio I
Torres, Jean L
Torres, Jesse
Torrez, Gino
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Toyo Artiles, Maida
Trevino, Anthony E
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Valdes Diaz, Dainery
Valdes, Omar
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Vega Rosario, Carlos M
Vega, Juan
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Velez, Emiliano
Ventura Ventura, Noe
Verdecia Acuna, Ricardo
Vicente Vicente, Erick
Villalobos Rivas, Rafael
Villalobos Tejedo, Emevelin T
Villareal, Rose Mary
Villegas Gonzalez, Reynaldo F

Virola Alamo, Jose A
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White, Frank
Williams, Antwon L
Williams, Christopher N
Wilson Canela, Alexander
Yari Gonsales Roldan, Kathia
Zackery, Johanna C
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Zollicoffer, Sam